

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM  
EXECUTIVE SUMMARY FOR ADOPTION**

**AGENDA # II.A.1.**

**ITEM SUMMARY**

The department requests that the Board adopt its proposed human health standards for the herbicide Bromoxynil.

**LIST OF AFFECTED RULES**

ARM 17.30.502, 17.30.619, 17.30.702, 17.30.715, 17.30.1001, 17.30.1006 and 17.30.1007 and Department Circular WQB-7.

**AFFECTED PARTIES SUMMARY**

The proposed standard for Bromoxynil could affect users of the chemical if it is allowed to reach waters of the state and the proposed standard would clarify action levels if the chemical were discharged.

**SCOPE OF PROPOSED PROCEEDING**

The Department requests that the Board adopt the amendment of Department Circular WQB-7 to include human health standards for Bromoxynil and adopt the amendments to the rules that refer to WQB-7.

**BACKGROUND**

This rule was proposed as a result of a request by the MT Department of Agriculture, pursuant to §80-15-201(2&3) and §80-15-202(1a), MCA. These statutes require the Department of Agriculture to request DEQ to establish a standard for an agricultural chemical if that chemical is detected in a State water.

As the result of an accidental introduction of Bromoxynil into a well and the potential contamination of the associated aquifer the Department of Agriculture has requested the department to begin rulemaking.

Bromoxynil has been identified by the EPA as a class C carcinogen. The Water Quality Act requires standards for carcinogens to be based on a 1/100,000 risk level (except for arsenic). Using information from EPA's Office of Pesticide Program the oral cancer slope factor for Bromoxynil is 0.103 mg/kg/day, using EPA procedures for calculation, the concentration at a risk level of 1/100,000 is  $[0.00001 / (0.103 \text{ mg/kg/day} * 1/70 \text{ kg} * 2 \text{ l/day})]$  which equals 0.0034 mg/l or 3.4 µg/l.

The department recommends amending Department Circular WQB-7, the Numeric Water Quality Standards to include Bromoxynil as a carcinogen with a human health standard of 3.4 µg/l. A public hearing was held on 22 November 2002 as noticed. No comments were received at the

hearing or during comment period in opposition to the proposed standards.

The board could decide to amend and re-notice the proposed human health standards for Bromoxynil. Postponement of adopting standards would not improve the quality or numeric value of the standard and could adversely affect the Department of Agriculture's ability to regulate the herbicide and protect human health. For the department to develop a different criterion or conduct studies to confirm the proposed standard would require extensive resources it does not have and several years to complete the research with questionable outcome. At a future date a different standard could be adopted if the EPA continues its research and finds a more appropriate criteria.

#### **HEARING INFORMATION**

A public hearing was held on 18 November 2002 and the comment period closed on 22 November 2002.

#### **BOARD OPTIONS**

The Board may:

1. Adopt the rules as noticed, or
2. Amend the Notice of Proposed Amendment of Rules and re-initiate rulemaking.

#### **DEQ RECOMMENDATION**

The Department recommends that the Board adopt the rules as noticed.

#### **ENCLOSURES**

The following information is attached to this summary:

- 1) Notice of Public Hearing on Proposed Amendment
- 2) Hearing Examiner Report
- 3) Draft Notice of Amendment including comments and responses.